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December 31, 2002

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Meeting on behalf of Broadview Networks, Talk America, and Eschelon Telecom,
CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

Pursuant to Sections 1.1206(a)(2) of the Commission's Rules we hereby submit, on behalf of Broadview Networks, Talk America, and Eschelon Telecom, in the above-captioned docketed proceedings, this notice of an *ex parte* meeting held on December 30, 2002 with Commissioner Martin and his legal advisor, Daniel Gonzalez, of the Federal Communications Commission. The topics discussed were as follows:

1. The potential impact of changing the requirements under which unbundled local switching must be made available on RBOCs who relied upon UNE-P to demonstrate facilities-based competition in their Section 271 applications. A detailed discussion of this issue was filed in an *ex parte* letter to the FCC from Brad E. Mutschelknaus of Kelley Drye on behalf of Talk America on December 30, 2002 via electronic submission.
2. The appropriate actions of the FCC versus the States in determining the circumstances under which unbundled local switching is made available and the timing of those actions. The chart detailing this information was distributed at the meeting and is attached to this letter.
3. The circumstances under which the FCC might find that unbundled local switching is no longer required as a UNE at TELRIC. The attached presentation was distributed at the meeting and provides further detail to our discussion.

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In attendance at the meeting were myself and Brad Mutschelknaus, Partner, Kelley Drye & Warren LLP.

In accordance with the Commission's rules, this letter (with attachments-2) is being filed electronically for inclusion in the public record of the above-referenced proceedings. Copies of this submission are being provided to Commissioner Martin and Mr. Gonzalez. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in cursive script, reading "Heather B. Gold". To the right of the signature, the word "12ms" is written in a similar cursive style.

Heather B. Gold
Principal

Attachments (2)

cc: Commissioner Martin
Daniel Gonzalez
Qualex International

The Role of the FCC and The States In Determining the Availability of ULS

FCC Determines National Guidelines

A. Hot Cut Provisioning Process

- i. ILEC has demonstrated ability to migrate UNE-P to UNE-L lines for any requesting carrier in a timely and efficient manner that is non-disruptive and transparent to end users.
- ii. Lines on a single order must be migrated within interval previously established by state or, as default, within 3 business days.
- iii. All UNE-P to UNE-L lines can be migrated at normal monthly volumes for UNE-P.
- iv. Cut over error rates of 0.99% or less.
- v. Initial hot cut migration at no cost to CLEC, subsequent migrations at cost-based rates.

B. Facilities Deployment Criteria

- i. Specifies the geographic scope of review for ULS impairment (*i.e.*, CO, LATA).
- ii. Specifies minimum list of cost factors to be used by States in determining appropriate line density counts which indicate removal of impairment for a specific CLEC.
- iii. Specifies criteria for States to use when determining timing of facilities deployment by CLEC.

C. Removal of ILEC ULS Requirement on a Market Basis

- i. Specifies the geographic scope of State review for ULS impairment (CO)
- ii. Sets criteria for evidence of impairment removal to be used by States; proven hot cut process, number of wholesale and other alternative providers of DS0, VG switching, availability of interoffice transport, etc.

Role of the States in Implementing Guidelines

A. Hot Cut Provisioning Process

- i. State to review ILEC-proposed and - filed performance plan, including migration costs, subject to federal criteria.
- ii. State to test and validate ILEC-filed performance plan subject to federal criteria.

B. Facilities Deployment Criteria

- i. State reviews relevant cost criteria and determines appropriate line densities necessary for switch and collocation deployment. (Criteria to be used are specified by the FCC, cost data to be based on previously conducted State ILEC cost studies)
- ii. State reviews relevant data on facilities deployment and determines migration schedule.

C. Removal of ILEC ULS Requirement on a Market Basis

- i. State assesses the presence of actual number of alternative DS0, VG switch providers (including at least 2 providing wholesale ULS) on a CO-by-CO basis.
- ii. State reviews ability of ILEC processes/procedures to accommodate CLEC-to-CLEC transfers and other requirements necessary for wholesale competition.
- iii. State determines if wholesale market is present and sustainable, justifying the lifting of the ULS requirement.

Timing

A. Hot Cut Provisioning Process*

State proceeding to determine the adequacy of plan and efficacy of actual process to be completed within 270 days of ILEC petition.

B. Facilities Deployment Criteria*

State proceeding to determine at what line densities CLECs to be required to deploy facilities to be completed within 270 days of ILEC petition.

CLECs to have 18 months to complete initial network buildout and migrate UNE-P lines that exceed the line density thresholds after conditions met and notice given.

C. Removal of ILEC ULS Requirement on a Market Basis

Alternative providers must have been using the ILEC migration process for movement between UNE-P and UNE-L for at least 6 months prior to ILEC petition (to test adequacy and sustainability of system).
State determination that ULS can be removed in given geographic area (CO) to be made within 270 days of ILEC petition.

CLECs to have 12 months to move to alternative vendors after conditions met and notice given.


* Steps A and B could be accomplished concurrently.



ULS: Conditions Necessary to Determine Removal of Impairment

Talk America
Broadview Networks
Eschelon Telecom
Ionex
AccessOne

AmeriMex Communications
eXpeTel
Midwest Telecom of America
Spectrotel
Vycera Communications



When Can ULS Be Eliminated as a UNE Priced at TELRIC?

- **Only the presence of a wholesale switching market can provide the evidence that the impairment has been eliminated**
- **Only a State can determine if an ILEC has implemented the systems and processes necessary to support a wholesale switching market**
- **Because the mass market requires geographic ubiquity, the availability of wholesale switching must be reviewed on a CO by CO basis.**



When Can ULS Be Eliminated as a UNE Priced at TELRIC?

- **ILEC success at eliminating hot cut impairment would be evidenced by presence in a given CO of multiple DS0, VG analog providers using their own switching**
 - CO should have at least 5 providers that have converted their UNE-P base to UNE-L and have continued to migrate customers from UNE-P to UNE-L for at least 6 months
 - At least 2 of those carriers should be providing a wholesale DS0, VG analog product to other carriers
 - CO must have adequate collocation space, DS0-level terminations and collocated equipment capacity
 - ILEC can have not restrictions on CLEC use of subaccounts or multiple carrier use of collocation space

When Can ULS Be Eliminated as a UNE Priced at TELRIC?

- **State would have 9 months after ILEC request to make determination that wholesale market was in place and ULS could be eliminated in given CO**
- **CLECs would have 12 months to find and transition to alternative ULS provider in CO**
- **If conditions which permitted State to eliminate ULS are not maintained, ULS could be reinstituted at TELRIC**